

Good Faith Effort Reconsideration Committee Determination

Project Number 300136, 30060, & 300361

BRIDGE WIDENING ON PRICE CANYON ROAD

Bids Opened –

DECEMBER 15, 2011

COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PUBLIC WORKS

Good Faith Effort Reconsideration Committee Determination
Contract 300136, 300360, 300361

INTRODUCTION

A reconsideration meeting on the contract for Bridge Widening on Price Canyon Road was held on February 7, 2012 to allow the low bidder Specialty Construction Inc. (SCI) to respond to the preliminary finding by the Public Works Design Division that SCI did not meet the 3% UDBE contract goal and did not make a good faith effort to meet the goal. In attendance were:

- SCI Contractor & Representatives
- Good Faith Effort Reconsideration Panel
- Public Works Staff, Design Division Manager
- Public Works Staff, Design Division Engineer III
- County Counsel
- Second Low Bid Contractor & Representatives
- Deputy Director of Public Works (Moderator)

BACKGROUND

The Reconsideration Panel consisted of Dave O'Halloran, Public Works Construction Division, John Diodati, Public Works Administrative Division, and Barbara Lynch, City of San Luis Obispo Public Works Department. Bids for this contract to widen a bridge on Price Canyon Road were opened on December 15, 2011. SCI's low bid was \$3,447,094.55 and the contract goal was 3% UDBE. SCI claimed 2.32% UDBE participation. Low bid #2 (Souza) and low bid #3 (Whitaker) each exceeded the 3% goal by having UDBE participation of 3.13% and 5.38%, respectively. These three firms were the only firms to bid on the project.

The preliminary evaluation by the Public Works Design Division concluded that SCI did not meet the goal and did not demonstrate good faith efforts to do so. Staff based its conclusion on SCI'S failure to solicit UDBEs for numerous reasons, which are outlined in a memorandum dated January 19, 2012 and entered into the record at the reconsideration hearing.

The Reconsideration Committee considered the information provided by SCI, including its written rebuttal dated January 27, 2012. Information provided by the second low bidder, Souza, was also considered. All UDBE and other submittal documents furnished, including the oral presentations, were reviewed in accordance with the requirements of 49 CFR Part 26 and the applicable Special Provisions of the contract.

Public Works Design Division staff presented nine categories to evaluate in determining if SCI made a good faith effort to solicit UDBEs. The following document outlines each category, staff's finding, and the Reconsideration Panel's conclusions.

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1. Items of Work the Bidder Made Available to UDBE Firms

Public Works Design Division concluded SCI's efforts were marginal to demonstrate a good faith effort.

The Reconsideration Panel concurs with this finding.

2. Solicitation Effort Documentation

Public Works Design Division concluded SCI's efforts were not sufficient to demonstrate a good faith effort.

The Reconsideration Panel concurs with this finding. Furthermore, SCI claimed they followed the instructions of the DBE Online Query form by using additional field codes to complete their search. Review of the instructions found on the Online Query Form reveals it states "On the query form, you will select one, or a combination of different search criteria to refine your search. You do not have to enter search criteria in every field, however the more fields you select, the more narrow your search" (emphasis added).

Contrary to SCI's claims in the hearing, the instructions do not require the user to use more than one field. Additionally, there is a very clear disclaimer that using such fields will narrow your search.

Furthermore, review of the online instructions reveal that it uses terms such as "Use this field if", "you may want to also" and "you may want to use this field rather than, or in addition to". None of these phrases explicitly required SCI to follow any specific action; they all simply provided the user with methods to narrow their search. SCI independently chose to narrow their search, which ultimately did not yield enough UDBE's to meet the 3% goal.

3. Rejected UDBE Documentation

Public Works Design Division concluded SCI's efforts were not sufficient to demonstrate a good faith effort.

The Reconsideration Panel concurs with this finding. SCI admitted to making mistakes regarding UDBE's during the bidding process. While this is unfortunate, it is not an acceptable excuse under the context of a good faith effort review. SCI could have demonstrated a good faith effort if SCI gave additional consideration of UDBE bids when they were received. However, it was apparent to the Reconsideration Panel that SCI strictly accepted the low bid only and did not investigate or attempt to negotiate any UDBE bids they received.

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4. Publication Effort Made to Advertise the Projects to Include UDBE Participation

Public Works Design Division concluded SCI's efforts were sufficient to demonstrate a good faith effort on this task.

The Reconsideration Panel concurs with this finding, and believes the impacts of these efforts were lessened by SCI's other actions regarding the solicitation of UDBE firms.

5. Agencies, Organizations, or Groups Contacted to Provide Assistance in Contacting, Recruiting and Using UDBE Firms

Public Works Design Division concluded SCI's efforts were marginal to demonstrate a good faith effort.

The Reconsideration Panel concurs with this finding. While SCI did reach out to three UDBE's (two of which bid), SCI provided no evidence they attempted to work with any of these firms to either a) bid on a small part of the project or b) negotiate the UDBE's bid to a price SCI could use on their final bid.

6. Efforts to Provide Information About the Plans, Specifications, and Contract Requirements

Public Works Design Division concluded SCI's efforts were sufficient to demonstrate a good faith effort on this task.

The Reconsideration Panel concurs with these findings, and believes these efforts had little impact because SCI had undertaken poor efforts in their initial UDBE solicitation.

7. Assistance with Bonding, Lines of Credit, Insurance, Equipment, Supplies, Materials, and/or Services

Public Works Design Division concluded SCI's efforts were sufficient to demonstrate a good faith effort on this task.

The Reconsideration Panel concurs, and believes these efforts had little impact because SCI had undertaken poor efforts in their initial UDBE solicitation.

8. Additional Data to Support a Demonstration of Good Faith Effort

Public Works Design Division concluded the additional data submitted by SCI did not help to support SCI's good faith effort.

The Reconsideration Panel concurs with this finding, and in fact believes the additional data provided by SCI only further supports the decision of the Reconsideration Panel.

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At the reconsideration hearing, SCI provided data that showed they had been through at least three other good faith effort evaluations, and in all those evaluations, it had been concluded that a good faith effort to obtain UDBE bids was accomplished by SCI.

However, SCI provided no information about the number 2 or number 3 low bidders of those projects. Specifically, how each of those bidders performed on reaching the UDBE bid goal. The following table compares the Price Canyon Bridge Widening UDBE performance of SCI and bidders #2 and #3 with the projects SCI provided as supporting evidence.

For the Price Canyon Bridge widening, bidders #2 and #3 both exceeded the 3% UDBE goal. In all of the projects provided as evidence by SCI, none of the bidders, including SCI, met the UDBE goal. Knowing that none of the bidders were able to meet the goal, it is understandable why SCI was found to have met the good faith effort test. It may have been an impossible goal to meet, given the certain project variables, and the review agency found SCI made an adequate attempt for those specific projects.

For Price Canyon, where both bidder #2 and #3 met the UDBE goals, a different scenario is revealed, which clearly indicates that a good faith effort would have obtained UDBE participation that met or exceeded the 3% goal.

Bid Date	12/15/2011	10/18/2011	10/7/2011	10/5/2011	5/5/2011
Agency	County of San Luis Obispo	County of Santa Barbara	CCWA	City of Avenal	County of Ventura
Project	Bridge Widening on Price Canyon Road	Jalama Road Slope & Storm Damage Repair at Mile Post 4.4	Concrete Encasement of a 42-Inch Pipeline for Willow Road Extension Project	Chloramination Facilities	Telegraph Road Bridge
Goal	3.00%	3.30%	7.10%	14%MBE / 6% WBE	9.30%
SCI	2.32%	0.47%	0.00%	0.00% / 0.00%	8.50%
#2 Bidder	3.13%	0.31%	0.00%	0.00% / 0.00%	3.77%
#3 Bidder	5.38%	Unknown	0.00%	3.4% / .3%	0.00%
Number of Other Bidders Meeting Goal	2	ZERO	ZERO	ZERO	ZERO

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9. Comparison of UDBE Participation Achieved by Others

Public Works Design Division concluded that taking into account the performance of the other bidders to meet the goal, SCI could have met the goal with additional reasonable efforts.

The Reconsideration Panel concurs with this finding. The efforts of bidder #2 and bidder #3 were clearly enough to yield UDBE participation above the project goal, achieving 3.13% and 5.38% respectively. At the hearing, and as recent as SCI's letter dated February 14, 2012, SCI continues to claim they self-performed their UDBE solicitation and "does not out source its contact like the other two bidders did for \$90.00 by outsourcing to UDBE solicitation service".

There are two fundamental problems with SCI's statement. First, SCI does not know what additional efforts the other bidders made beyond the solicitation service. Since both bidders met the goal, their good faith effort is not in question. Secondly, and more important, SCI is acknowledging that an outsource firm exists, and for a nominal fee, could have helped SCI meet the contract goals.

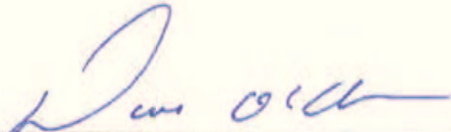
FINDINGS AND CONCLUSIONS OF GOOD FAITH EFFORT RECONSIDERATION COMMITTEE

Based on the following, the Reconsideration Committee concludes that SCI did not demonstrate that it made good faith efforts to meet the 3% UDBE contract goal. In reaching this conclusion, the Committee evaluated whether the bidder has shown that it took all necessary and reasonable steps to achieve the UDBE goal, which steps, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient UDBE participation, even if it was not fully successful.

The Reconsideration Committee concluded that SCI could have made a better effort to solicit UDBE subcontractors on this project, by performing multiple queries using the online database to find UDBE subcontractors, and continuing to solicit UDBE's through the bidding process.

Therefore, based on the totality of the efforts undertaken by the bidder, the Committee finds that, in its judgment, weighing the quality, quantity and intensity of the efforts made by the low bidder, that SCI did not demonstrate good faith efforts to meet the 3% UDBE contract goal.

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DAVE O'HALLORAN
SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

2-15-12

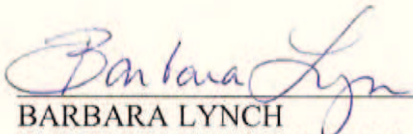
DATE



JOHN DIODATI
SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

2-15-12

DATE



BARBARA LYNCH
CITY OF SAN LUIS OBISPO
DEPARTMENT OF PUBLIC WORKS

2/15/12

DATE